

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

SureFunding, LLC,

Debtor.

Chapter 11

Case No. 20-10953 (LSS)

Related Docket No. 59

**MOTION OF JUSTIN ABERNATHY AND JASON ABERNATHY FOR EXPEDITED
HEARING AND SHORTENED NOTICE REGARDING SEALED MOTION BY JUSTIN
ABERNATHY AND JASON ABERNATHY FOR PROTECTIVE ORDER IN
CONNECTION WITH MAY 4, 2020 DEPOSITIONS AND MAY 12, 2020 HEARING WITH
RESPECT TO THE MOTIONS OF THE UNITED STATES TRUSTEE AND CERTAIN
NOTEHOLDERS TO DISMISS THE ABOVE-CAPTIONED CHAPTER 11 CASE**

Justin Abernathy and Jason Abernathy, both in their individual capacity (collectively, the “Abernathys”), through their undersigned counsel respectfully move (the “Motion to Shorten”) for entry of an order shortening the applicable notice period and setting an expedited hearing regarding the *Sealed Motion of the Abernathys for Protective Order in Connection with May 4, 2020 Depositions and May 12, 2020 Hearing with Respect to the Motions of the United States Trustee and Certain Noteholders to Dismiss the Above-Captioned Chapter 11 Case* (Docket No. 59) (the “Motion for Protective Order”). In support of this Motion to Shorten, the Abernathys respectfully represent as follows:

JURISDICTION

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b). Venue is proper in this Court under 28 U.S.C. §§ 1408 and 1409.

2. The predicates for the relief requested herein are sections 102 and 105(a), (d) of title 11, United States Code (the “Bankruptcy Code”), Rule 9006 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rules 7026-1 and 9006-1 of the Local

Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”).

BACKGROUND

3. On April 16, 2020, the Noteholders¹ filed their Motion to Dismiss, seeking to dismiss the above-captioned chapter 11 case. See Docket No. 15. In connection with their Motion to Dismiss, the Noteholders have noticed the depositions of SureFunding, Justin Abernathy, and Jason Abernathy. See Docket No. 33, Noteholders’ Notice of Service (Apr. 23, 2020). Justin Abernathy has been designated as one of SureFunding’s Rule 30(b)(6) witnesses, and all three depositions are scheduled for May 4, 2020.

4. For purposes of the depositions on May 4, 2020, counsel for the Abernathys, counsel for the Debtor, and counsel for the Office of the United States Trustee discussed and agreed immediately before the deposition to a defined scope of such depositions, subject to further order of the Court, pursuant to the Motion for Protective Order on the disputed topics of such depositions.

5. The hearing on the Motion to Dismiss is currently scheduled for May 12, 2020 (the “Motion to Dismiss Hearing”).

RELIEF REQUESTED

6. By this Motion to Shorten, the Abernathys seek entry of an order shortening the time for a hearing on the Motion for Protective Order. Specifically, the Abernathys respectfully request that the Court schedule a hearing on the Motion for Protective Order as soon as possible, and in all events prior to the Motion to Dismiss Hearing.

¹ Capitalized terms used herein, but not defined herein shall have the meanings ascribed such terms in the Motion for Protective Order.

BASIS FOR RELIEF REQUESTED

7. Local Rule 9006-1(b) provides that discovery related motions shall be governed by Local Rules 7026-7037. See Del. Bankr. L.R. 9006-1(b). Local Rule 7026-1 provides that motions under Bankruptcy Rules 7026-7037 shall be served at least seven (7) days before the hearing date on such motion. See Del. Bankr. L.R. 7026-1(b). Under Local Rule 9006-1(e), however, such period may be shortened by order of the Court upon written motion specifying the exigencies supporting shortened notice. See Del. Bankr. L.R. 9006-1(e); see also Fed. R. Bankr. P. 9006(c)(1) (permitting Court to shorten notice “for cause shown”).

8. Sufficient cause exists to justify shortening the notice period for the hearing on the relief requested in the Motion for Protective Order. Specifically, the discovery process in connection with the Motion to Dismiss has been relatively expedited given the importance and substance of the relief sought in the Motion to Dismiss. Throughout the process, Debtor’s counsel attempted to reach a consensual resolution with respect to the scope of the Depositions. Over the weekend prior to May 4, 2020, the Abernathys engaged undersigned counsel to represent them individually, including with respect to the Depositions. Undersigned counsel promptly attempted to reach an agreement and were also unable to fully resolve the concerns raised in the Motion for Protective Order.

9. Delay in adjudicating the Motion for Protective Order will prejudice all parties because the Court’s guidance with respect to the relief sought in the Motion for Protective Order would assist all parties with understanding how to proceed with respect to the evidence and its presentment at the Motion to Dismiss Hearing.

10. Shortly after filing the Motion for Protective Order, undersigned counsel requested the consent from counsel for the Debtor, counsel for the Noteholders and counsel for

the Office of the United States Trustee for shortened notice. Counsel for the Debtor has consented to shortened notice. The Office of the United States Trustee and counsel for the Noteholders have not yet expressed an opinion with respect to the requested shorten notice (however, both have been occupied with depositions throughout the day).

WHEREFORE, the Abernathys respectfully request that this Court (i) grant the Motion to Shorten; (ii) conduct a hearing on the Motion for Protective Order as soon as possible, and in all events prior to the hearing scheduled for May 12, 2020; and (iii) grant the Abernathys such further relief as is just and proper under the circumstances.

Dated: May 4, 2020

Respectfully submitted,

/s/ Ericka F. Johnson

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